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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 44 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

LALBHAI BECHARBHAI PATEL

Appearance:

MR BY MANKAD, Learned APP for Appellant

NOTICE SERVED for Respondent Nos. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 09/08/2001

ORAL JUDGEMENT

1. Heard Mr.B.Y.Mankad, learned APP for the appellant.

2. On 17th April, 1985 at 9:10 a.m., the Food Inspector Shri Manilal Hargovandas Patel took the sample of "curd" from Shri Ishwarbhai Naranbhai Patel, original accused No.2, who has stated that accused No.1 Lalbhai Becharbhai Patel is the owner of accused No.3 Shivshakti

Duddhalay. The sample of curd was sent to Public Analyst and the report of Public Analyst dated 27th May, 1985 shows that it was adulterated in the sense that it does not conform to the prescribed standard provided under the Prevention Adulteration Rules, 1955 as milk fat and and milk solid was found less than the minimum. After obtaining sanction to prosecute the accused Criminal Complaint No.2866 of 1985 was filed against all the three accused, (1) Lalbhai Becharbhai Patel, (2) Ishwarbhai Naranbhai Patel and (3) Shivshakti Duddhalay. However, during the pendency and final hearing of Criminal Case pending before the learned Magistrate, the accused No.2 died on 7th March, 1988. In this regard death certificate was produced on record. Accordingly the Criminal Case against the accused No.2 Ishwarbhai Naranbhai Patel stood abated on 29th September, 1999 and the learned Magistrate ordered to proceed further with the case against the remaining two accused i.e. respondent Nos.1 and 3.

3. Considering the evidence of the complainant and Panch witnesses, the learned Magistrate was of the opinion that the complainant failed to prove its case against the accused No.2 and acquitted them by giving benefit of doubt.

4. This order is challenged in this appeal which was admitted on 6th May, 1982 and which is being heard and disposed of today.

5. The learned Magistrate has acquitted the accused for more than one reason. According to him, the complainant has failed to prove that he has strictly complied with the Rule-14 of the Prevention Adulteration Rules, 1955.

6. In the instant case, the complainant has not clearly stated that when he took sample of curd, the bottles were cleaned there. The second ground of acquittal is that the complainant has not proved that the respondent No.1 - Lalbhai Becharbhai Patel is the owner of the respondent No.3 - Shivshakti Duddhalay from which the sample of curd was taken. It is difficult to convict the person on the statement of the accused who sold the sample to the complainant, when accused No.2 unfortunately died during the pendency of the case before the learned Magistrate except that there is no evidence laid by the complainant to prove that the sample of curd was taken by him from accused No.3 of which the accused No.1 was the owner.

7. The learned Magistrate has also acquitted the accused on the ground of that breach of Section 11(1)(c) of the Prevention of Food Adulteration Act, 1954. The said provision is held to be mandatory by this Court in the case of Himmatlal Motichand Shah v/s. State of Gujarat and Another, reported in 1994 (1) GLR 497 on the ground that the acquittal could not have been sustained. Similarly on the point of sanction, the learned Judge was wrong because that point was also not available to him in view of the judgment of this Court in the case of State of Gujarat v/s. Imtiyaj Haji Abdul Sattar, reported in 1998 (1) GLR 214.

8. However the above two reasons assigned by the learned Judge are sufficient for acquitting the respondents accused. In that view of the matter, when the offences have been committed on 17th April, 1985 and when the sample of curd was not taken in conformity with the prescribed provisions of Rules, this Court would not interfere with such order after a lapse of more than 16 years in the appeal.

9. In view of the above discussions, this appeal is dismissed.

(B. J. Shethna,J.)

(vrp)*